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UNITED STATES DISTRICT COURT CLERK'S OFFICE
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS

RIZZARI CONSTRUCTION,

Plaintiff,

v.

GRANITE INDUSTRIAL GASES,
INC., AND TODD MILLER,

Defendants.

Civil Action No.: 05cv10434(GAO)
Magistrate Judge Alexander

**ANSWER TO THE COMPLAINT AND JURY DEMAND BY THE DEFENDANTS,
GRANITE INDUSTRIAL GASES, INC., AND TODD MILLER**

NOW COME the Defendants, Granite Industrial Gases, Inc. and Todd Miller, by and through their counsel, and hereby answer the Plaintiff's Complaint and assert affirmative defenses as follows:

All factual allegations, to the extent made in any unnumbered paragraphs of the Complaint, are expressly denied by the defendants.

PARTIES

1. The defendants are without information sufficient to determine the truth of the allegations contained in Paragraph 1 of the Complaint, and, therefore, deny the same.
2. The defendants admit the allegations contained in Paragraph 2 of the plaintiff's Complaint.
3. The defendants admit the allegations contained in Paragraph 3 of the plaintiff's Complaint.

FACTS

4. The defendants deny the allegations contained in Paragraph 4 of the plaintiff's Complaint.

5. The defendants deny the allegations contained in Paragraph 5 of the plaintiff's Complaint.

6. The defendants deny the allegations contained in Paragraph 6 of the plaintiff's Complaint.

7. The defendants deny the allegations contained in Paragraph 7 of the plaintiff's Complaint.

8. The defendants deny the allegations contained in Paragraph 8 of the plaintiff's Complaint.

9. The defendants deny the allegations contained in Paragraph 9 of the plaintiff's Complaint.

10. The defendants deny the allegations contained in Paragraph 10 of the plaintiff's Complaint.

COUNT I
(Breach of Contract)

11. Paragraph 11 of the plaintiff's Complaint makes no factual allegations to which a response is required.

12. The defendants deny the allegations contained in Paragraph 12 of the plaintiff's Complaint.

13. The defendants deny the allegations contained in Paragraph 13 of the plaintiff's Complaint.

14. The defendants deny the allegations contained in Paragraph 14 of the plaintiff's Complaint.

15. The defendants deny the allegations contained in Paragraph 15 of the plaintiff's Complaint.

16. The defendants deny the allegations contained in Paragraph 16 of the plaintiff's Complaint.

17. The defendants deny the allegations contained in Paragraph 17 of the plaintiff's Complaint.

18. The defendants deny the allegations contained in Paragraph 18 of the plaintiff's Complaint.

COUNT II
(Implied Contract)

19. Paragraph 19 of the plaintiff's Complaint makes no factual allegations to which a response is required.

20. The defendants deny the allegations contained in Paragraph 20 of the plaintiff's Complaint.

21. The defendants deny the allegations contained in Paragraph 21 of the plaintiff's Complaint.

22. The defendants deny the allegations contained in Paragraph 22 of the plaintiff's Complaint.

23. The defendants deny the allegations contained in Paragraph 23 of the plaintiff's Complaint.

24. The defendants deny the allegations contained in Paragraph 24 of the plaintiff's Complaint.

25. The defendants deny the allegations contained in Paragraph 25 of the plaintiff's Complaint.

COUNT III
(Deceit/Fraud)

26. Paragraph 26 of the plaintiff's Complaint makes no factual allegations to which a response is required.

27. The defendants deny the allegations contained in Paragraph 27 of the plaintiff's Complaint.

28. The defendants deny the allegations contained in Paragraph 28 of the plaintiff's Complaint.

29. The defendants deny the allegations contained in Paragraph 29 of the plaintiff's Complaint.

30. The defendants deny the allegations contained in Paragraph 30 of the plaintiff's Complaint.

31. The defendants deny the allegations contained in Paragraph 31 of the plaintiff's Complaint.

COUNT IV
(Chapter 93A §§ 2 and 11)

32. Paragraph 32 of the plaintiff's Complaint makes no factual allegations to which a response is required.

33. The defendants deny the allegations contained in Paragraph 33 of the plaintiff's Complaint.

34. The defendants deny the allegations contained in Paragraph 34 of the plaintiff's Complaint.

35. The defendants deny the allegations contained in Paragraph 35 of the plaintiff's Complaint.

COUNT VI
(Equity/Unjust Enrichment)

36. Paragraph 36 of the plaintiff's Complaint makes no factual allegations to which a response is required.

37. The defendants deny the allegations contained in Paragraph 37 of the plaintiff's Complaint.

38. The defendants deny the allegations contained in Paragraph 38 of the plaintiff's Complaint.

39. The defendants deny the allegations contained in Paragraph 39 of the plaintiff's Complaint.

40. The defendants deny the allegations contained in Paragraph 40 of the plaintiff's Complaint.

41. The defendants deny the allegations contained in Paragraph 41 of the plaintiff's Complaint.

42. The defendants deny the allegations contained in Paragraph 42 of the plaintiff's Complaint.

43. The defendants deny the allegations contained in Paragraph 43 of the plaintiff's Complaint.

FURTHERMORE, THE DEFENDANTS STATE AND ASSERT THE FOLLOWING AFFIRMATIVE DEFENSES:

AFFIRMATIVE DEFENSES

First Affirmative Defense

1. The Plaintiff's Complaint does not state a cause of action upon which relief can be granted.

Second Affirmative Defense

2. All or part of the Plaintiff's claims are barred by the applicable statutes of limitations.

Third Affirmative Defense

3. All or some of the Plaintiff's claims are barred by accord and satisfaction.

Fourth Affirmative Defense

4. All or some of the Plaintiff's claims are barred by the equitable doctrine of laches.

Fifth Affirmative Defense

5. All or some of the Plaintiff's claims are barred by the doctrine of estoppel.

Sixth Affirmative Defense

6. All or some of the Plaintiff's claims are barred by the doctrine of unclean hands.

Seventh Affirmative Defense

7. All or some of the Plaintiff's claims are barred by the doctrine of waiver.

Eighth Affirmative Defense

8. The Plaintiff's Chapter 93A claim is barred by his failure to comply with the statutory requirements.

Ninth Affirmative Defense

9. The Plaintiff's Complaint should be dismissed pursuant to M.G.L. c. 231, §6F, insofar as the Complaint is frivolous in nature.

THE DEFENDANT DEMANDS A TRIAL BY JURY

The Defendants,
GRANITE INDUSTRIAL GASES, INC.,
and TODD MILLER,

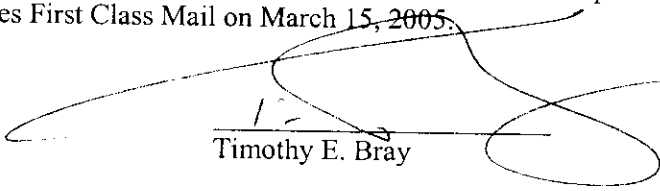
By their attorneys,



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CERTIFICATE OF SERVICE

I, Timothy E. Bray, hereby certify that a true copy of this document was served upon the attorney of record for each party by United States First Class Mail on March 15, 2005.



Timothy E. Bray